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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE MANUEL GARCIA,

Defendant and Appellant.

D070376

(Super. Ct. No. SCS159981)

APPEAL from an order of the Superior Court of San Diego County,

David J. Danielsens, Judge. Affirmed.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

I.

INTRODUCTION

A jury found Jose Manuel Garcia guilty of one count of auto theft (Veh. Code, § 10851, subd. (a)) (count 4) and one count of possessing a controlled substance for sale

(Health & Saf. Code, § 11378) (count 5). The record indicates that with respect to count 4, Garcia personally inflicted great bodily injury on a person 70 years of age or older (Pen. Code, 12022.7, subd. (c)),¹ and that, with respect to count 5, Garcia was personally armed with a firearm during the commission of the violation of Health and Safety Code, section 11378 (§ 12022, subd. (c)). Garcia also pled guilty to one count of vehicular manslaughter (§ 192, subd. (c)(1)) (count 1).²

The trial court sentenced Garcia to an aggregate term of 34 years to life in prison. The court's sentence consisted of a term of 30 years to life on count 5, comprised of an indeterminate sentence of 25 years to life under the Three Strikes law (§§ 667, subds. (b)-(i), 668, 1170.12), plus a consecutive term of five years for the section 12022, subdivision (c) enhancement; a concurrent sentence of 25 years to life under the Three Strikes law on count 4;³ and a consecutive four-year term on count 1.⁴

¹ Unless otherwise specified, all subsequent statutory references are to the Penal Code.

² The record contains only a *partial* amended abstract of judgment and a reporter's transcript from a sentencing hearing held after the initial sentencing hearing in this case. We have described the offenses based on the limited record that is available to us; from this limited record, it appears that, during the initial sentencing hearing, Garcia was sentenced on additional counts beyond those described in the record on appeal.

³ The court stayed execution of the enhancement for great bodily injury on an elder (§ 12022.7, subd. (c)).

⁴ The record indicates that the People alleged that Garcia had suffered four prior strike convictions. While the record does not contain a true finding on those allegations, the record does contain a partial abstract of judgment showing that Garcia was sentenced pursuant to the Three Strikes law.

Garcia filed a petition for recall of sentence pursuant to the Three Strikes Reform Act of 2012 (§ 1170.126) ("the Act"). After determining that Garcia was ineligible for relief under the Act, the trial court denied the petition.

Appointed appellate counsel filed a brief presenting no argument for reversal, but inviting this court to review the record for error in accordance with *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). After having independently reviewed the entire record for error as required by *Anders v. California* (1967) 386 U.S. 738 (*Anders*) and *Wende*, we affirm.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The complaint*

In June 2001, the People filed an amended felony complaint, charging Garcia with nine separate offenses and alleging that Garcia had suffered four strike prior convictions.

In April 2010, Garcia was sentenced as described in part I, *ante*.

B. *Garcia's petition*

Garcia filed a petition for recall of sentence under the Act in March 2016. In his petition, Garcia requested that the court recall his sentences on counts 4 and 5 and resentence him.

C. *The trial court's order denying the petition*

The trial court entered an order denying the petition in April 2016. In its order the court noted that Garcia sought resentencing on counts 4 and 5 and ruled that he was ineligible for relief on either count. The court reasoned:

"The commitment offenses he cites are ineligible for relief. Count 4 is classified as a violent felony under . . . [section] 667.5[, subdivision] (c)(8) by virtue of the great bodily injury enhancement under [section] 12022.7[, subdivision] (a).⁵ Count 5 is ineligible because, in the commission of the drug offense, he was armed with a firearm as found in the [section] 12022[, subdivision] (c) allegation. [¶] This defendant has alleged facts disqualifying himself from any sentence modification under the express terms of the [Act] on these counts."⁶

D. *Garcia's appeal*

Garcia filed an appeal from the trial court's order denying his petition.

III.

DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings in the trial court. Counsel presented no argument for reversal but invited this court to review the record for error in accordance with *Wende, supra*, 25 Cal.3d 436. Pursuant to *Anders, supra*, 386 U.S. 738.

After this court received counsel's brief, we gave Garcia the opportunity to file a supplemental brief. Garcia has not filed a brief.

⁵ Garcia's enhancement was actually charged under section 12022.7, subdivision (c), rather than section 12022.7, subdivision (a). However, the error is immaterial. Section 667.5, subdivision (c)(8) defines as a violent felony those felonies in which an enhancement under section 12022.7 has been charged and proved regardless of the particular subdivision of section 12022.7 at issue.

⁶ After noting that the Act generally requires a petition for recall of sentence to be filed within two years of the effective date of the Act, the court stated that it "disregard[ed] the tardiness of [Garcia's] filing."

A review of the record pursuant to *Wende, supra*, 25 Cal.3d 436, and *Anders, supra*, 386 U.S. 738, has disclosed no reasonably arguable appellate issue. Garcia has been adequately represented by counsel on this appeal.

IV.

DISPOSITION

The order denying the petition for recall of sentence is affirmed.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

IRION, J.